

COMMANDITAIRE VENNOOTSCHAP AS SUBJECT OF BUILDING RIGHTS TITLE: ISSUES WITHIN THE FRAMEWORK OF LEGAL NORMATIVITY?¹

**Rian Saputra^{1,2*}, Dora Kusumastuti¹, Nilam Firmandayu³, Tiara Tioline⁴,
Zepiko Ferera⁵, Jose Gama Santos⁶**

¹Faculty of Law, Universitas Slamet Riyadi, Surakarta, Indonesia

²Senior External Research Fellow, Faculty of Law and International Relations, Universiti Sultan Zainal Abidin, Malaysia

³Faculty of Law, Universitas Gadjah Mada, Yogyakarta, Indonesia

⁴Master's Program in Notary Law, Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

⁵Undergraduate Law Student, Faculty of Law, Universitas Slamet Riyadi, Surakarta, Indonesia

⁶Faculty of Law, Universidade Dili, Dili, Timor-Leste

*riansaputra@unisri.ac.id

Abstract

The issuance of Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 concerning the granting of Building Use Rights to Commanditaire Vennootschap (CV) raises legal concerns regarding the limits of administrative discretion, the principle of legality, and the hierarchy of legal norms in Indonesian land law. The Circular Letter was introduced to facilitate investment by allowing CVs to obtain Building Use Rights; however, this policy potentially conflicts with Law No. 5 of 1960 concerning Basic Agrarian Principles and Government Regulation No. 18 of 2021, which limit the holders of Building Use Rights to Indonesian citizens and legal entities established under Indonesian law. This study examines the legal validity of the Circular Letter as an administrative policy instrument and analyses whether the recognition of CVs as holders of Building Use Rights represents a lawful exercise of governmental discretion. The study focuses on the concept of *freies Ermessen*, the requirements for exercising discretion under Law No. 30 of 2014 concerning Government Administration, and the application of the General Principles of Good Governance. The findings demonstrate that administrative discretion does not grant unlimited authority to government officials to create new legal subjects or modify rights established by higher-ranking regulations. The Circular Letter exceeds the legitimate scope of discretion because it substantively expands the category of Building Use Rights holders without explicit statutory authority. Although the policy objective of facilitating investment constitutes a legitimate governmental interest, such objective cannot override the principle of legality and legal certainty. This study concludes that the recognition of CVs as holders of Building Use Rights requires comprehensive legal reform rather than administrative policy. Amendments to the Basic Agrarian Law and related regulations are necessary to establish a clear legal basis while maintaining consistency, accountability, and certainty within the Indonesian land law system.

Keywords: Administrative Discretion; Circular Letter; Building Use Rights; Commanditaire Vennootschap; Land Law Reform.

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A. Introduction

The State's regulation of land allocation and use is of fundamental importance, given the inseparable relationship between land and public welfare, particularly its economic value (Abdurrahman et al., 2026; Ardani et al., 2024; Fuad et al., 2023). Land is an essential element of human life and settlement (Gilbert, 2013; Schmidt-Larios, 2026). Land rights are recognised as fundamental rights, encompassing both legal control and ownership (White et al., 2023). Moreover, land provides the basis for housing and a wide range of economic activities, including agriculture, plantations, and other commercial enterprises. As a tangible resource, land comprises the earth's surface together with the buildings and vegetation situated upon it. Its indispensable role in sustaining human life explains why land ownership remains a universal aspiration (Hanum & Zaman, 2024).

At the constitutional level, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides the fundamental constitutional basis for the formulation of Indonesia's national agrarian laws and policies. The provision stipulates that the earth, water, and the natural resources contained therein shall be controlled by the State and utilised for the greatest prosperity of the people (Rahmah et al., 2024). In implementing this constitutional mandate, Law No. 5 of 1960 concerning Basic Agrarian Principles (Basic Agrarian Law) was enacted as the primary legal framework governing land relations in Indonesia. This constitutional principle is further reflected in Article 2 paragraph (1) of the Basic Agrarian Law, which provides that, based on Article 33 paragraph (3) of the 1945 Constitution and the principles established in Article 1, the earth, water, airspace, and the natural resources contained therein are vested in the State's right of control as the manifestation of the State's authority as the representative of the Indonesian people (Hanum et al., 2024).

Legal certainty and legal protection are fundamental interests that every individual seeks to secure in all aspects of life, including land ownership. The right to own land is recognised as a fundamental human right protected under both international and domestic legal frameworks. In Indonesia, the legal framework governing land rights is principally established under Basic Agrarian Law (Fathoni & Vasalo, 2023). Among its key provisions is the regulation of land rights, which confer upon the holder the authority to use and derive benefits from the land concerned. Such rights may be granted to individuals, community organisations, or legal entities in accordance with the applicable legal provisions. To ensure legal certainty regarding ownership, control, and land use, land registration is required. Upon completion of the registration process, a certificate of title is issued as evidence of the registered land right.

Records of land rights and the maintenance of the corresponding land registration data must be entered in the land title certificate. The registration of transfers of land rights is carried out by the Head of the Land Office and the Land Deed Official (*Pejabat Pembuat Akta Tanah (PPAT)*) or Temporary *PPAT* in accordance with Government Regulation No. 24 of 1997 concerning Land Registration and Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 concerning the Implementing Provisions of Government Regulation No. 24 of 1997 on Land Registration. Through Regulation No. 3 of 1997, the Minister of Agrarian Affairs/Head of the National Land Agency established the procedural framework governing the registration of transfers of land rights, which must be followed by the parties responsible for carrying out land registration activities (Firman, 2004).

Building Use Rights constitute one of the principal categories of land rights under Indonesian land law, alongside ownership rights, cultivation rights, and rights of use. As a limited proprietary right, Building Use Rights play a particularly significant role after Cultivation Rights due to their function in facilitating housing and infrastructure development. Building Use Rights are defined as the right to construct and own buildings on land that is not owned by the rights holder for a maximum term of 30 years (Basuki et al., 2023). Upon the application of the rights holder and subject to the intended use and condition of the buildings, the term may be extended for a further

period of up to 20 years. The importance of Building Use Rights is further reflected in Government Regulation No. 18 of 2021 on Management Rights and Land Rights, which provides detailed rules governing Cultivation Rights, Building Use Rights, and Rights of Use. This regulatory framework corresponds with the rapid expansion of housing and construction undertaken by both the public and private sectors. Consequently, the development of housing and other buildings primarily involves three categories of land: state land, land subject to management rights, and privately owned land (Palmer, 2011).

Eligible holders of Building Use Rights are limited to Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. This is expressly stipulated in points (a) and (b), indicating that unincorporated business entities are not recognised as eligible holders of Building Use Rights. Nevertheless, on 8 June 2019, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (*ATR/BPN*) issued Circular Letter No. 2/SE-HT.02.01/VI/2019 concerning the Granting of Building Use Rights for Commanditaire Vennootschap (CV) (Biya & Rudy, 2020). The Circular Letter principally provides that: first, to facilitate land services, a Commanditaire Vennootschap may apply for Building Use Rights; second, the application must be submitted by the partners or their authorised representatives acting with the consent of all partners; and third, in addition to complying with the prevailing laws and regulations governing land services and service standards, applications for the grant of Building Use Rights to a Commanditaire Vennootschap must satisfy the prescribed legal requirements (Batubara et al., 2019).

This Circular Letter sets out the procedures governing the grant of Building Use Rights to CV. According to the Ministry of ATR/BPN, the policy was introduced to facilitate investment by expanding access to land rights for CVs. The issuance of the Circular Letter represents a significant policy development for the business sector, as it permits CVs to obtain Building Use Rights. Previously, the Basic Agrarian Law limited eligibility for Building Use Rights to Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. Accordingly, only incorporated business entities qualified as holders of Building Use Rights. However, Circular Letter No. 2/SE-HT.02.01/VI/2019 allows business entities in the form of Commanditaire Vennootschap to apply for Building Use Rights. Applications may be submitted by a limited partner (*commanditaire*), a general partner (*complementary partner*), or their authorised representative. Where the application is filed through a representative, a power of attorney confirming that the representative acts on behalf of, and with the consent of, all partners must be provided (Syam et al., 2019).

The issuance of this Circular Letter broadens the interpretation of, and in certain respects departs from, the legal framework established under Law No. 5 of 1960 on the Basic Agrarian Principles and Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration concerning the eligible holders of Building Use Rights. Given that it takes the form of a Circular Letter, its validity raises fundamental legal concerns regarding the designation of CV as an eligible holder of Building Use Rights. Under the principle of legality, which is a fundamental element of the rule of law, every governmental legal act must be based on authority expressly conferred by statutory regulations. Accordingly, government officials may not alter or determine the legal status or rights of individuals except within the scope of authority granted by law.

Circular Letter No. 2/SE-HT.02.01/VI/2019 was issued to regulate the policy on granting Building Use Rights to CV. In mid-2019, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency formally promulgated the Circular Letter, which sets out the policy governing the ownership of Building Use Rights by CVs. The policy was further explained by a representative of the National Land Agency during the seminar entitled Dialectics of the Circular Letter of the Minister of Agrarian Affairs and Spatial Planning on the Granting of Building Use Rights to Commanditaire Vennootschap and Electronic Mortgage Rights, organised

by the Central Java Regional Board of the Indonesian Association of Land Deed Officials (*Ikatan Pejabat Pembuat Akta Tanah (IPPAT)*) in Surakarta on 22 August 2019. During the seminar, the *BPN* representative stated that a *Commanditaire Vennootschap* may hold land under Building Use Rights, as evidenced by a land title certificate. According to the *BPN*, the policy was introduced to facilitate investment activities undertaken by *Commanditaire Vennootschap*.

Furthermore, it is important to recognise that circular letters often resemble policy regulations when examined within the legislative framework. Although policy regulations possess substantive normative content and may have practical binding effect comparable to statutory instruments, the prevailing view in legal scholarship does not classify them as legislation (Hartanto et al., 2025). Policy regulations frequently adopt the form and structure of statutory instruments. They commonly contain a preamble setting out the underlying considerations and legal basis, followed by operative provisions organised into articles, sections, and chapters, and conclude in a manner similar to statutory legislation.

Policy regulations embodied in circular letters are closely associated with the doctrine of *freies Ermessen*, under which administrative authorities formulate and implement policies through *juridische regels*, such as guidelines, announcements, and circular letters. The doctrine of *freies Ermessen* enables administrative bodies or public officials to act and make decisions with a degree of discretion that is not entirely confined by existing statutory provisions (Nurudin, 2016). Fundamentally, the recognition of *freies Ermessen* stems from the adoption of the welfare state concept. Within the framework of the rule of law, *freies Ermessen* is characterised by several essential elements, namely the pursuit of public service objectives, the active role of administrative authorities, the exercise of initiative on their own responsibility, responsiveness to urgent and unforeseen circumstances, and accountability to both legal norms and ethical principles (Zaelani et al., 2019).

According to this doctrine, a circular letter is classified as a *beleidsregel* (policy rule), which must comply not only with the principles governing the formation of legislation but also with the principles of good policy-making. Where policy rules regulate the public, their validity depends on compliance with both the formal and substantive requirements applicable to policy-making. This provides the normative basis for assessing the legality of circular letters and other policy regulations within the Indonesian legal system, particularly following the enactment of Law No. 30 of 2014 on Government Administration. Accordingly, the central issue concerns the legal validity of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency policy recognising CV as an eligible holder of Building Use Rights. The validity of this policy ultimately depends on whether it is supported by a lawful legal basis.

Previous studies have examined the legality and exercise of administrative discretion from different perspectives. Disantara analysed the legitimacy of circular letters as administrative instruments during the Covid-19 pandemic and concluded that administrative discretion is lawful provided that it complies with statutory law and the General Principles of Good Governance. However, the research emphasised that circular letters do not possess binding legal force equivalent to statutory legislation. The present research extends this scholarship by advancing a legal reform perspective through the formulation of clearer parameters governing the issuance, substantive content, and oversight of circular letters to prevent abuses of administrative authority (Disantara, 2020). Similarly, Hadna et al. (2022) examined the exercise of discretion by street-level bureaucrats during the Covid-19 pandemic and found that discretionary practices were influenced by economic conditions, officials' characteristics, and the circumstances of service users. Building on these findings, the present research reconceptualises administrative discretion as an issue of legal reform by proposing stronger legal parameters and oversight mechanisms for the exercise of administrative authority. Meanwhile, Gonschorek (2021) found that the discretionary authority of regional heads in allocating development grants may be shaped by personal and political relationships. This research develops that perspective by advocating legal

reform through strengthened institutional design and oversight mechanisms to minimise the risk of abuse of discretion. These studies collectively demonstrate that, although circular letters are recognised in Indonesia as administrative instruments when exercised consistently with statutory law and the AUPB, further legal reform is required to clarify their legal status, define the limits of administrative discretion, and strengthen oversight mechanisms.

Thus, this research aims to comprehensively examine the legal validity of Circular Letter of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 concerning the grant of Building Use Rights to CV. It evaluates the Circular Letter's status as an administrative policy instrument within the framework of administrative law, assesses its conformity with Law No. 5 of 1960 on the Basic Agrarian Principles and Government Regulation No. 18 of 2021 concerning the eligible holders of Building Use Rights, and examines the limits of the government's exercise of *freies Ermessen* in formulating policy through circular letters. The research further seeks to identify potential normative conflicts, assess their implications for the principle of legal certainty, and evaluate the need for legal reform in regulating circular letters to ensure that they continue to facilitate investment while remaining consistent with the principle of legality, the hierarchy of laws and regulations, and the rule of law.

B. Discussion

1. Freies Ermessen in the Framework of Administrative Law: Absolute or Limited?

Drawing on the work of the Indonesian administrative law scholar Ridwan HR, it is necessary to first examine the concept of *freies Ermessen*, known as freedom of action, before addressing the existence of policy regulations (Suparto et al., 2024). Ridwan HR (2014) characterises *freies Ermessen* as discretionary power, i.e., a legal mechanism that grants administrative authorities or public officials the freedom to act without being strictly bound by statutory provisions. Tsukanov (2023) further argues that governmental discretion entails the authority to enable administrators to determine when, how, and against whom laws and regulations should be applied. Such discretion arises where the legislature provides either no standards or only vague and ambiguous guidance, thereby requiring administrators to determine the meaning and relevance of the applicable legal rules. The process of making a choice lies at the core of discretion, while discretion itself constitutes a fundamental principle of governance.

Consistent with this view, Nalle (2018) argues that *freies Ermessen* fundamentally refers to the freedom to implement legal rules in particular circumstances, the discretion to assess those circumstances, and the authority to act in the absence of explicit legal provisions or where such provisions have not yet been established, thereby reflecting the proactive role of government. However, Basah (1985) cautions that the exercise of *freies Ermessen* is not absolute, as it remains subject to several fundamental principles: it must be directed toward the performance of public service functions; constitute an active exercise of administrative authority; be authorised by law; be undertaken on the official's own initiative; be intended to address urgent and unforeseen circumstances; and be capable of legal and moral accountability (Marbun & MD, 2009). Likewise, Rahman et al. (2024) emphasise that, in exercising their authority, governmental bodies remain bound by the legal norms of administrative law as well as by unwritten legal principles that embody the essence of good governance.

Although the conferral of *freies Ermessen* upon governmental or administrative authorities is a logical consequence of the welfare state doctrine, its exercise must remain subject to legal limits within a state governed by the rule of law (Enqvist & Naarttijärvi, 2023). Accordingly, the exercise of *freies Ermessen* by administrative authorities is constrained by the applicable legal framework. The use of *freies Ermessen* must therefore conform to both written and unwritten legal norms. Indeed, the excessive or improper exercise of administrative discretion in particular circumstances may constitute arbitrariness (Castro Fuentes, 2023).

Surahno et al. (2024) argue that the exercise of *freies Ermessen* is subject to two principal limitations. First, it must not conflict with the prevailing legal framework or positive law. Second, it may be exercised only to serve the public interest. More broadly, governmental discretion encompasses the implementation and elaboration of general and abstract legal norms, the interpretation of ambiguous or open-ended statutory provisions, the selection among legally available alternatives, the balancing of competing public interests, and, where no specific legal rule exists, the formulation of administrative norms necessary for the administration of public affairs (Suhariyanto, 2018).

The administration of public affairs in a constitutional state is fundamentally governed by the principle of legality (Carelli & Peters, 2024; Dyzenhaus et al., 2001; Harada, 2024). Nevertheless, governmental authorities are entrusted with discretionary power because statutory rules are inherently general and abstract, often containing ambiguous or open-ended provisions and permitting multiple legally acceptable alternatives. Moreover, circumstances may arise that require governmental action despite the absence of explicit legal regulation. Accordingly, the conferral of discretionary authority upon administrative bodies does not constitute a departure from, or negate, the principle of legality (McCann, 2023). Rather, the exercise of governmental discretion promotes a more flexible legal framework, enabling administrative authorities to respond effectively to the complexities of evolving factual circumstances (Alexander & Richmond, 2007).

A subsequent question is how a governmental instrument may be characterised as an exercise of administrative discretion. In addressing this issue, Ridwan HR (2014) explains that, in performing administrative functions, the government formulates policies through *beleidsregels*, i.e., policy directives, policy statements, regulations, guidelines, instructions, circular letters, resolutions, administrative instructions, policy memoranda, ministerial regulations, administrative decisions, and public announcements. Similarly, Surahno et al. (2024) observe that, in Dutch administrative law, policy regulations are expressed through a variety of instruments, i.e., *beleidslijnen*, *het beleid*, *voorschriften*, *richtlijnen*, *regelingen*, *circulaires*, *resoluties*, *aanschrijvingen*, *beleidsnota's*, *reglementen*, *beschikkingen*, and *bekendmakingen*. A comparable view is advanced by Anggono (2016), who argues that various governmental instruments may constitute discretionary products, including circular letters, orders or instructions, work guidelines or manuals, implementation guidelines, operational or technical instructions, public announcements, guidebooks, terms of reference, and work or project designs containing regulatory content.

Accordingly, in the context of the legal issues examined in this research, Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 constitutes a discretionary administrative instrument whose validity may be assessed against the doctrines and legal principles governing administrative discretion, particularly those codified in Article 24 of Law No. 30 of 2014 on Government Administration. This issue is examined in the following section to determine the legal validity of Circular Letter No. 2/SE-HT.02.01/VI/2019. Accordingly, it may be argued that, from a philosophical perspective, administrative discretion does not confer unfettered authority upon public officials. Rather, every exercise of discretionary power must comply with established normative standards (McCann, 2023). There is broad scholarly consensus that the validity of a discretionary instrument depends upon compliance with specific normative requirements. Fundamentally, the exercise of administrative discretion is intended to address legal gaps and ambiguities in order to promote the public interest (Enqvist & Naarttijärvi, 2023).

2. Commanditaire Vennootschap as a Legal Subject of Building Use Rights: Issues of Legal Normativity

A circular letter, as an instrument of administrative policy, derives from the government's discretionary authority. The authority to formulate policy regulations does not originate from the

constitutional or statutory power to enact legislation but instead arises, either directly or indirectly, from the exercise of administrative discretion. Accordingly, policy regulations do not constitute statutory legislation. Rather, they operate as normative instruments that complement the formal legal framework. For this reason, policy regulations are commonly characterised as pseudo-wetgeving (pseudo-legislation) or *spiegelrecht* (shadow or mirror law) (Gonschorek et al., 2018). McHarg further emphasises that, although discretionary decision-making should be structured through administrative rules, such rules must not preclude consideration of individual circumstances and must remain subject to the principles of rationality, proportionality, and flexibility in their application (McHarg, 2017).

According to Asshiddiqie (2006), an instrument is characterised as a policy because, in formal legal terms, it cannot be classified as a statutory regulation. A common example is a circular letter issued by a minister or a director general to officials within the relevant administrative hierarchy (Akmal, 2021). Although such an instrument may take the form of an ordinary administrative letter rather than a formal legislative instrument, such as a ministerial regulation, its content may nevertheless contain normative directives. This characteristic is reflected in Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019, which sets out the policy governing the grant of Building Use Rights to CV. The legal basis for issuing such a Circular Letter may be traced to the provisions on administrative discretion under Law No. 30 of 2014 on Government Administration, as well as the relevant administrative law doctrines (Baber, 2011). The critical legal issue, however, is whether Circular Letter No. 2/SE-HT.02.01/VI/2019, as an exercise of administrative discretion, satisfies the statutory requirements governing the lawful exercise of discretionary authority and the applicable doctrinal principles (Vese, 2025). In this respect, the Law on Government Administration constitutes the principal legal framework governing the exercise of administrative authority in pursuit of effective, lawful, and accountable governance, with the public administration serving as the institutional mechanism through which governmental functions are carried out (Rini, 2018).

A central legal challenge in contemporary public administration concerns the relationship between the principle of legality and the discretionary authority exercised by officials within the executive branch (Cartier, 2009; Rosenbloom, 2022; Rosenbloom et al., 2017; Warren, 2018). Administrative discretion is inherent in the authority conferred upon public officials to perform the functions attached to their office (Ruiz-Tagle, 2024). In this regard, Zafimahatradraibe et al. (2025) argue that administrative authority should be understood as a manifestation of power relations rather than merely the product of formally attributed powers. Accordingly, fragmented administrative authority generates not only normative problems arising from overlapping regulatory frameworks but also institutional competition over the exercise of authority. In such circumstances, administrative decisions may be driven more by institutional power than by the legal framework intended to ensure legal certainty, coordination, and accountability. At the same time, political power supported by strong institutional backing may strengthen the capacity of government. Within the welfare state paradigm, such institutional capacity is essential to advancing public welfare. Nevertheless, historical experience demonstrates that a strong government may also facilitate abuses of administrative authority, particularly through the misuse of power or the excessive exercise of administrative discretion (Lim, 2007).

Administrative discretion refers to the authority of public officials to act or make decisions on the basis of their own judgment within the scope of their official duties. Such authority is conferred by law to enable administrative officials to discharge their functions effectively. However, the exercise of discretionary power also creates the potential for abuse, as the implementation of public policies may be influenced by personal or institutional interests. Accordingly, administrative discretion is subject to specific legal requirements to ensure that it is exercised lawfully rather than arbitrarily (Ruiz-Tagle, 2024). Several legal scholars have conceptualised administrative discretion from this perspective. Atmosudirdjo, for example, defines discretion as the freedom of

authorised administrative officials to act or make decisions based on their own judgment. He further argues that discretion complements, rather than displaces, the principle of legality, which requires every administrative act to be grounded in law (Suparto et al., 2024). This is because it is impossible for legislation to regulate every factual circumstance that may arise in the exercise of public office (Paar-Jakli et al., 2024).

Under the Law on Government Administration, discretion is defined as a decision and/or administrative action taken by government officials to resolve specific issues arising in the administration of government (Paar-Jakli et al., 2024). Similarly, Bertelli et al. (2025) conceptualise discretion through the notion of authorised discretion, whereby the exercise of discretionary power must be guided by the principles of administrative law and democratic values to ensure good governance and the protection of the public interest. Accordingly, discretion is intended to facilitate the effective administration of government and to ensure legal certainty where existing legislation is ambiguous, incomplete, or fails to provide adequate guidance, particularly in situations of administrative inaction. Its primary purpose is to address legal gaps while promoting administrative efficiency and the public welfare (Vese, 2025).

Only authorised government officials may exercise administrative discretion. In exercising such discretion, officials must pursue the statutory objectives for which the discretionary power was conferred, and its exercise must be justified by legally recognised grounds. In particular, discretion is warranted where statutory provisions are unclear, incomplete, or incapable of resolving urgent and exceptional circumstances. Accordingly, the exercise of discretion must remain consistent with the applicable legal framework (Bertelli et al., 2025). The legality of administrative discretion is assessed in light of the General Principles of Good Governance, including fairness, due care (*zorgvuldigheid*), proper purpose (*zuiverheid van oogmerk*), proportionality (*evenwichtigheid*), and legal certainty (*rechtszekerheid*). More specifically, Article 23 of Law No. 30 of 2014 on Government Administration permits the exercise of discretion in four circumstances: first, where legislation provides alternative decisions and/or administrative actions; second, where legislation does not regulate a particular matter; third, where statutory provisions are incomplete or ambiguous; and fourth, where governmental stagnation requires administrative action in the public interest (Zaelani et al., 2019). Furthermore, Article 24 of the Law on Government Administration prescribes six cumulative requirements for the lawful exercise of discretion: *first*, it must be consistent with the purposes set out in Article 22(2); *second*, it must not conflict with prevailing laws and regulations; *third*, it must comply with the General Principles of Good Governance; *fourth*, it must be based on objective considerations; *fifth*, it must not give rise to a conflict of interest; and *sixth*, it must be exercised in good faith (Nurudin, 2016).

The requirements governing the exercise of administrative discretion under Article 24 of the Law on Government Administration are founded on a clear legal rationale. They are intended to prevent the misconception that government officials are free to make decisions and take administrative action solely on the basis of their own judgment without regard to the legal constraints governing the exercise of public authority, particularly those relating to the public interest, the limits of statutory competence, and compliance with the General Principles of Good Governance (Suhariyanto, 2018). Within a state governed by the rule of law, no public authority is entirely unfettered. Whether discretionary or bound, every exercise of governmental authority remains subject to the applicable legal framework. Against this statutory framework, the following analysis evaluates the legal validity of Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 concerning the grant of Building Use Rights to CV by reference to the requirements for the lawful exercise of discretion set out in Article 24 of the Law on Government Administration.

a. Discretion under Article 22(2) of Law No. 30 of 2014 on Government Administration

Within the contemporary legal state, legislation is expected not only to regulate existing social conditions but also to guide and facilitate social development and transformation. Soeprapto (2007) argues that the primary purpose of law-making extends beyond merely codifying prevailing norms and values; rather, it is fundamentally directed toward promoting social change and transformation (Saputra et al., 2025). Similarly, Saefudin et al. (2025) contends that legal policy embodied in legislation functions as an instrument of social engineering, reflecting the objectives pursued by the government in encouraging society to embrace new values. In the same vein, Hattu maintains that a modern constitutional state requires laws and regulations that provide the legal framework for conferring, regulating, limiting, and supervising the exercise of governmental powers while safeguarding the rights of the public. Against this theoretical framework, this section evaluates whether Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 is consistent with the objectives and statutory requirements governing the exercise of administrative discretion under Law No. 30 of 2014 on Government Administration, particularly with respect to extending eligibility for Building Use Rights to CV (see Table 1).

Table 1.
Assessment of Circular Letter of the Minister of ATR/BPN No. 2/SE-HT.02.01/VI/2019
Against the Requirements for Administrative Discretion

Law No. 30/2014	Provisions	Legal Implications
Article 22(2): Every exercise of administrative discretion is subject to statutory objectives, i.e., the provisions in points (a)–(d).	Facilitating government administration;	The Circular Letter allowing CVs to obtain Building Use Rights is primarily directed toward facilitating investment rather than improving government administration;
	Filling a legal gap;	No legal gap exists regarding the eligible holders of Building Use Rights, as they are expressly regulated under Article 36(1) of the Basic Agrarian Law and Article 34 of Government Regulation No. 18 of 2021;
	Providing legal certainty; and	The Circular Letter instead creates legal uncertainty by extending eligibility for Building Use Rights to CVs, which are not recognised as legal entities; and
	Overcoming governmental stagnation under specific circumstances for the public benefit and public interest.	The policy granting Building Use Rights to CVs does not demonstrate the existence of governmental stagnation requiring resolution through administrative discretion.
Article 24: Government officials exercising administrative discretion must satisfy the following requirements, i.e., the provisions in points (a)–(f).	Consistent with the objectives of discretion referred to in Article 22(2);	<i>Vide</i> the potential issues identified under Article 22(2) above;
	Not contrary to prevailing laws and regulations;	The Circular Letter permits CVs to become eligible holders of Building Use Rights, whereas Article 36(1) of the Basic Agrarian Law and Article 34 of Government Regulation No. 18 of 2021 restrict eligibility to Indonesian citizens and Indonesian legal entities;
	Consistent with the General Principles of Good Governance (<i>AUPB</i>);	The extension of eligibility for Building Use Rights through a Circular Letter was undertaken without amending the Basic Agrarian Law or the Government Regulation governing land rights;

Law No. 30/2014	Provisions	Legal Implications
	Based on objective reasons; Not giving rise to a conflict of interest; and Exercised in good faith.	The policy is based on the objective of promoting investment; and Although the policy aims to facilitate business activities, it must remain within the limits of administrative authority.

Source: Compiled by the Author(s).

Table 1 demonstrates that the potential legal issues arising from Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 may be analysed against two principal parameters established under Law No. 30 of 2014 on Government Administration, namely the objectives of administrative discretion under Article 22(2) and the requirements governing its exercise under Article 24. Based on the first parameter, the policy allowing CV to obtain Building Use Rights does not fully satisfy the statutory objectives of administrative discretion. The Circular Letter is primarily directed toward facilitating investment rather than merely ensuring the effective administration of government. Moreover, it is not justified by the existence of a legal gap, as the eligible holders of Building Use Rights are expressly regulated under Article 36(1) of the Basic Agrarian Law and Article 34 of Government Regulation No. 18 of 2021, nor is it supported by circumstances of governmental stagnation requiring the exercise of administrative discretion. Furthermore, extending eligibility for Building Use Rights to CV may undermine legal certainty because it is undertaken outside the normative framework established by prevailing legislation.

The exercise of administrative discretion by government officials must pursue the statutory objectives prescribed in Article 22(2) of Law No. 30 of 2014 on Government Administration. Under this provision, discretion may be exercised only to facilitate government administration, fill legal gaps, ensure legal certainty, or overcome governmental stagnation in particular circumstances for the public interest. Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 establishes the policy governing the grant of Building Use Rights to CV. Issued in mid-2019, the Circular Letter sets out the policy framework permitting CVs to acquire Building Use Rights. The policy was subsequently explained by a representative of the National Land Agency during the seminar entitled *Dialectics of the Circular Letter of the Minister of Agrarian Affairs and Spatial Planning on the Granting of Building Use Rights to Commanditaire Vennootschap and Electronic Mortgage Rights*, organised by the Central Java Regional Board of the *IPPAT* in Surakarta on 22 August 2019. At the seminar, the *BPN* representative stated that CVs are permitted to hold land under Building Use Rights, provided that the relevant land rights are duly registered. According to the *BPN*, the policy was introduced to facilitate investment activities undertaken by CV (Biya & Rudy, 2020).

An examination of the purpose and objectives underlying the government's exercise of administrative discretion through the Circular Letter indicates that it does not fully satisfy the statutory requirements governing discretion under Law No. 30 of 2014 on Government Administration. Based on the requirements prescribed in Article 24, Table 1 demonstrates that the policy may fail to comply with several fundamental conditions for the lawful exercise of administrative discretion. In particular, extending eligibility for Building Use Rights through a Circular Letter potentially conflicts with higher-ranking legislation and is not entirely consistent with the General Principles of Good Governance, given that the substantive scope of eligible holders of land rights was altered without corresponding amendments to the Basic Agrarian Law or Government Regulation No. 18 of 2021. Although the policy is based on the

objective of promoting investment and was adopted in good faith to facilitate business activities (Kusumastuti et al., 2025), these considerations cannot override the principle of legality, which defines the limits of administrative discretion. Accordingly, Table 1 indicates that Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 may exceed the proper function of administrative discretion by substantively expanding the category of eligible holders of Building Use Rights without explicit statutory authority (Zaelani et al., 2019).

The validity of a legal norm is derived from another legal norm rather than from empirical facts. Accordingly, the validity of a norm is determined not by social reality but by its conformity with a higher norm from which it derives its authority. Kelsen (1949) refers to this superior norm as the Grundnorm or basic norm. The Grundnorm functions as the foundational reference for the creation of all legal norms. It serves as the ultimate source of validity and provides the normative link connecting individual norms within a coherent legal system (Samekto & Natalis, 2024). From this perspective, the validity of a legal norm can be assessed only by reference to the higher norms within the same normative hierarchy. A similar positivist approach was advanced by John Austin (Kelsen, 1941). Austin (1832) defines law as “a rule laid down for the guidance of an intelligent being by an intelligent being having power over him”. In essence, legal positivism maintains that, first, a legal system derives its authority from its formal establishment by a competent law-making authority; second, law is understood primarily through its formal legal structure, thereby distinguishing legal form from legal substance; and third, although the substantive content of law is recognised, it does not constitute the principal object of legal analysis.

From Kelsen’s perspective, the government’s exercise of administrative discretion through the Circular Letter does not satisfy the concept of legal validity, under which the validity of a legal norm depends upon its conformity with higher norms, particularly the fundamental norm (Wijaya & Gunawan, 2025). Within Kelsen’s theory, fundamental norms may be understood in terms of static and dynamic normative systems. A static normative system derives validity from the substantive consistency of a norm with higher normative principles, whereas a dynamic normative system derives validity from the lawful authority and procedure through which the norm is created. In this respect, Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 is inconsistent with the statutory framework governing administrative discretion under the Law on Government Administration.

b. Discretion does not Contradict the Law

The exercise of administrative discretion must remain consistent with the applicable legal framework, as *freies Ermessen* constitutes an essential function of governance within the welfare state. Under this model, the government’s primary responsibility is to provide public services and promote the welfare of society (Ruiz-Tagle, 2024). Kravchuk (1991) argues that administrative discretion is not incompatible with the rule of law because it is an inherent and necessary feature of modern public administration. Similarly, Ong (2021) contends that discretion does not conflict with the law, as it represents the exercise of authority conferred by law and must be exercised within the limits, purposes, and principles of administrative law. Accordingly, the legality and substantive content of an administrative decision cannot be rigidly separated when assessing the validity of the exercise of administrative discretion. In Indonesia, administrative discretion developed alongside the delegation of governmental responsibilities to implement and realise the constitutional objectives of the state. Administrative discretion may be exercised in two principal circumstances: *first*, where no legislation governs the resolution of a concrete issue requiring immediate action; and *second*,

where the applicable legislation expressly grants government officials discretionary authority in the exercise of their statutory powers.

The logical consequence is that the exercise of administrative discretion is unwarranted where legislation clearly and comprehensively regulates a particular matter, requiring public authorities to act in accordance with the applicable statutory provisions. Accordingly, administrative discretion is, in principle, unnecessary where the scope of governmental authority has been expressly and exhaustively prescribed by legislation, as administrative action need only comply with the governing legal framework. Conversely, where normative ambiguity impedes the administration of government, the exercise of discretion is justified only insofar as it remains consistent with the substance and objectives of the applicable legislation (Zaelani et al., 2019). In the context of Indonesian land law, the legal subjects eligible to hold Building Use Rights are expressly regulated under Law No. 5 of 1960 on the Basic Agrarian Law in conjunction with Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration. Against this statutory framework, the legal status of Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 in conferring legitimacy upon CV as a legal subject of Building Use Rights warrants careful examination to determine whether it provides greater legal flexibility or instead obscures the existing legal framework. A more detailed analysis is presented in Table 2.

Table 2.

Legal Implications of the Status of Circular Letter of the Minister of ATR/BPN No. 2/SE-HT.02.01/VI/2019 in Recognising CV as a Subject of Building Use Rights

Basis of Building Use Rights	Provisions	Legal Implications
Article 36(1) of Law No. 5 of 1960: Eligible holders of Building Use Rights are exhaustively limited to the subjects specified in points (a) and (b).	The recognised legal subjects are: a. Indonesian citizens; and b. Legal entities established under Indonesian law and domiciled in Indonesia.	The Circular Letter potentially departs from the statutory provisions governing eligible holders of Building Use Rights by allowing Commanditaire Vennootschap, which is not a legal entity, to qualify as a holder of Building Use Rights. Rather than filling a legal gap, the policy potentially expands a norm that has already been prescribed by higher-ranking legislation, thereby raising concerns regarding the legality of the exercise of administrative discretion.
Article 34 of Government Regulation No. 18 of 2021: Building Use Rights may be granted only to the legal subjects specified in points (a) and (b).		

Source: Compiled by the Author(s).

Table 2 demonstrates that Circular Letter of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 2/SE-HT.02.01/VI/2019 potentially conflicts with the normative framework governing the legal subjects of Building Use Rights as prescribed in Article 36(1) of Law No. 5 of 1960 on the Basic Agrarian Law. This provision exhaustively recognises only two categories of eligible holders of Building Use Rights, namely Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. Under Indonesian law, a CV is not recognised as a legal entity but rather as an unincorporated business association that lacks a legal personality separate from its partners (Theresia, 2022; Abhimantara, 2019). Accordingly, permitting a Commanditaire Vennootschap to obtain Building Use Rights through a Circular Letter substantively expands the category of eligible legal subjects prescribed by the Basic Agrarian Law and Government Regulation No. 18 of 2021. Such an expansion constitutes more than an administrative interpretation; it potentially alters the statutory norm governing the legal subjects entitled to hold land rights.

Thus, the circular is inconsistent with Law No. 5 of 1960 on the Principles of Agrarian Law. The CVs operate as business entities that have not yet acquired legal status. Based on

these arrangements, the circular letter cannot be applied or enforced, as it conflicts with higher-ranking legal provisions. Consequently, in practice, various challenges are expected to arise for *PPATs* as professionals closely associated with the preparation of land deeds. If the policy stipulated in the circular letter is implemented, *PPATs* may be reluctant to execute deeds concerning the transfer of land rights. They are concerned about potential future liabilities arising from the deeds they prepare, particularly if disputes emerge due to the ministerial policy, which appears to contradict Law No. 5 of 1960 on the Principles of Agrarian Law. *PPATs* must comply with Law No. 5 of 1960 on the Principles of Agrarian Law in performing their duties within the land law framework (Biya & Rudy, 2020).

Regarding the context of the circular letter, it concerns the policy on land ownership under the Right to Build Title for CVs. At first glance, the Presidential Regulation of the Republic of Indonesia Number 20 of 2015 concerning the National Land Agency indicates that *BPN* has the authority to issue such policies, thereby suggesting the validity of the Circular Letter as an instrument regulating matters within the land sector. However, upon further examination, a regulatory inconsistency can be identified in the provisions of the Circular Letter. Specifically, Article 7(e) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 15 of 2018 stipulates that provisions concerning land use and utilization for the issuance of land technical considerations must comply with applicable legal frameworks. The Circular Letter, however, fails to satisfy this requirement, as both Law No. 5 of 1960 on the Principles of Agrarian Law and Article 34 of Government Regulation Number 18 of 2021 on Management Rights, Land Rights, indicate that CVs are not recognized as legal entities eligible to hold land rights under such status (Batubara et al., 2019).

The policy stipulates that CVs are permitted to hold land under the Right to Build Title, provided that the land certificate is issued in the names of all persons concerned. Furthermore, if there is an intention to transfer such rights, the transfer requires the unanimous consent of all individuals whose names are recorded on the certificate. It is widely recognized that the composition of members within a CV may change rapidly; therefore, it is possible that the names recorded on the certificate may no longer reflect the current members at the time of land transfer. This situation raises the question of whether the transfer of rights requires the consent of all persons listed on the certificate or whether the consent of all current managing members of the CV is sufficient when transferring the land. If the transfer of land rights requires the consent of all persons identified in the certificate, practical difficulties may arise. This is because the CV would be required to obtain approval from all individuals whose names appear on the certificate, even though some of them may no longer be associated with the CV at the time of the land transfer.

From the perspective of the hierarchy of norms and the principle of legality, Table 2 indicates that the circular letter has shifted from its administrative function as an internal instrument into an instrument that creates quasi-regulation. In principle, a circular letter merely serves to provide administrative guidance or interpretative directions and does not possess the authority to modify, introduce, or expand rights and obligations established under laws or government regulations. Thus, the policy cannot be justified as an attempt to address a legal vacuum, as the legal framework concerning the subjects eligible to hold Right to Build Title has been clearly regulated under Article 36(1) of the Basic Agrarian Law in conjunction with Article 34 of Government Regulation No. 18 of 2021. Instead, the circular letter potentially raises issues of legality, legal certainty, and consistency within the land law system, as it creates room for the recognition of subjects entitled to hold Right to Build Title without a legal basis derived from higher-ranking legislation. This condition demonstrates the potential existence of *ultra vires* in the exercise of administrative authority, whereby an

administrative policy exceeds the normative limits of authority granted by laws and regulations.

Furthermore, Government Regulation No. 24 of 1997 on Land Registration, Article 39 paragraph (1)(c), stipulates that the *PPAT* is required to refuse the preparation of a deed if any party involved in the legal act lacks the necessary legal entitlement or qualification to undertake such an act. Based on this provision, *PPATs* are required to reject the preparation of deeds concerning land rights held by CVs, as *PPATs* operate within the framework of Law No. 5 of 1960 on the Principles of Agrarian Law and Government Regulation No. 40 of 1996, which establish that CVs do not constitute legal entities capable of holding land rights. Accordingly, it may be argued that the discretionary policy provided under the Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019 concerning the land ownership policy of the Right to Build Title for CVs contradicts the aforementioned laws and regulations.

Upon analysis through Fuller's (1969) theory, eight principles or requirements of legality can be identified: (1) the legal system must consist of established rules rather than arbitrary decisions; (2) enacted rules must be publicly promulgated; (3) regulations should not operate retroactively; (4) rules must be expressed in clear and understandable terms; (5) the legal system must maintain internal coherence, ensuring that its rules do not contradict one another; (6) rules must be practicable and must not impose requirements beyond the capacity of compliance; (7) regulations must remain stable and avoid frequent changes; and (8) there must be consistency between the rules established and their actual implementation in practice (Luthan, 2012). The issuance of Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019 concerning the policy on land ownership under the Right to Build Title for CVs appears to deviate from Lon Fuller's conception of legality, particularly the fifth principle, which requires a legal system to maintain internal coherence and avoid contradictions among its legal norms.

c. Discretion Must be Based on the Principles of Good Governance

Discretion constitutes a fundamental aspect of public administration, particularly in the implementation of public policy (Brik, 2026; Hupe, 2025; Matipa, 2020; Montjoy & O'Toole, 1979). Under certain circumstances, it is expected to facilitate the attainment of optimal outcomes through careful and reasoned consideration. This is also consistent with Indonesia's conception of the welfare state. Moreover, discretion serves to address the deficiencies and limitations inherent in laws and regulations encountered by the Government (Zamroni, 2019). Although the delegation of discretionary authority to the Government is essential within a legal framework, its exercise must remain subject to established legal limits. This indicates that the exercise of discretion by government officials is influenced by several conditions, particularly when directed toward the performance of public service functions, the active discharge of governmental responsibilities, and the need to respond to urgent and unforeseen circumstances where existing legislation is unclear or fails to regulate the matter adequately. Furthermore, such discretionary action must conform to the Principles of Good Governance (Muhshi, 2018).

The history of the Principles of Good Governance in Indonesia began with the shift from the *nachtwachterstaat* concept to the welfare state. Ridwan HR (2014) demonstrates that this transition has implications for the form of governmental intervention in regulating various dimensions of social life. In principle, every such intervention must be based on the applicable laws and regulations. However, Ridwan HR emphasizes that, in practice, legislation remains subject to limitations due to its rigid and static nature, giving rise to the concept of *freies Ermessen*. Hamidi (1999) conceptualizes the Principles of Good Governance as ethical values that exist and develop within the sphere of administrative law. These principles serve as guidelines for administrative officials in the exercise of their functions and as a legal basis for

claims brought by plaintiffs. Most of these principles remain unwritten and abstract and may be derived from societal practice. Nevertheless, some have been incorporated into Indonesian positive law while retaining their character as legal principles.

Ridwan HR, citing Purbopranoto, identifies several Principles of Good Governance recognized within the Indonesian system of government, including the principles of legal certainty, proportionality, equality in decision-making, due care, the obligation to provide reasons for every decision, the prohibition against abuse of authority, fair play, justice and reasonableness, the protection of legitimate expectations, the nullification of the consequences of invalid decisions, the protection of personal views and ways of life, prudence, and the promotion of the public interest (Purbopranoto, 1975; HR, 2014). Accordingly, every policy regulation issued by state officials should, in principle, conform to these principles and must not contradict them.

Drawing from the foregoing discussion, the exercise of discretion in governmental policymaking must conform to the Principles of Good Governance, particularly the principles prohibiting the abuse of authority and arbitrariness. In other words, governmental policies may be regarded as improper when they contain arbitrary elements (Juwita, 2018). The Principles of Good Governance function as a normative framework for public officials in the administration of state affairs, particularly in the pursuit of good governance. These principles also serve as indicators for state administrators in the performance of their duties, ensuring that their actions remain consistent with the objectives and spirit of the law.

The relationship between the Principles of Good Governance and the exercise of discretion may be understood through the theoretical framework concerning the functions of law in society. This theory posits that the Principles of Good Governance serve as normative foundations for administrative authorities in making decisions and taking administrative actions. These principles facilitate appropriate legal interpretation and provide a framework for assessing policies that seek legitimacy amid competing demands for legal certainty, justice, and fairness. With respect to discretion, as a manifestation of governmental authority that may operate beyond the explicit provisions of written regulations, both legal theory and governmental practice recognize its potential for the abuse of power. Such abuse may give rise to conflicts of interest between governmental authorities and individuals adversely affected by the excessive exercise of discretionary powers. Consequently, the Principles of Good Governance may serve as evaluative criteria for determining whether governmental actions conform to the principles of the rule of law (Enqvist & Naarttijärvi, 2023).

Consequently, the deviations embodied in the Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019 concerning the policy on land ownership under the Right to Build Title for CVs may be regarded as departures from established legal provisions. Such deviations are inconsistent with the Principles of Good Governance, which serve as fundamental normative standards in governmental administration and guide the relationship between the government and the public. The Principles of Good Governance constitute a foundational framework for administrative decisions and actions, as well as an implicit legal standard governing the exercise of public authority. These principles perform several important functions in their development and application. *First*, in the administration of government, they serve as a reference for interpreting and implementing statutory provisions that may be unclear or ambiguous. Moreover, they limit and prevent the exercise of discretion or the adoption of policies that materially depart from established statutory provisions. Accordingly, they are intended to prevent unlawful acts, abuse of authority, abuse of rights, and actions exceeding the limits of legal competence. *Second*, the Principles of Good Governance may serve as a legal basis for filing an administrative claim under Article 53 of Law No. 5 of 1986 for individuals seeking justice. *Third*, for Administrative Court judges, they provide a framework for reviewing and, where appropriate, annulling decisions issued

by administrative agencies or officials. *Fourth*, the Principles of Good Governance serve as an important reference for legislative bodies in the law-making process (Sinaga & Putri, 2020).

Specifically, with respect to the conflict between the Circular Letter and Article 36(1) of Law No. 5 of 1960 on the Principles of Agrarian Law, in conjunction with Article 34 of Government Regulation No. 18 of 2021 on Management Rights and Land Rights, these provisions stipulate that the entities eligible to hold land under the Right to Build Title are Indonesian citizens and legal entities established under Indonesian law and domiciled within the territory of Indonesia. A CV is a business entity that has not acquired legal entity status. In light of these provisions, the exclusion of CVs as subjects entitled to hold the Right to Build Title is unequivocal. Accordingly, the discretionary provisions embodied in the Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019 concerning the policy on land ownership under the Right to Build Title for CVs constitute a deviation from the applicable legal framework.

3. Reform of National Land Law: A Legal Solution to Accommodate CVs as Subjects of Building Use Rights

Initiating the discussion on the urgency of legal reform, Friedman (2015) highlights the relevance of law as an institution that continuously changes and evolves in response to societal, political, economic, and social developments. He argues that legal reform is essential to ensure that law remains relevant, responsive, and capable of fulfilling its function in regulating social change. Consistent with this perspective, Zhang (2015) emphasizes that legal reform is necessary within the global landscape to address the marginalization of domestic states in the face of foreign competitors. Meanwhile, Trubek (2001) explains that the law and development movement represents an academic and practical endeavor that employs law and modern legal systems as instruments to promote democratic development and capitalist economies. Therefore, these three concepts are relevant in explaining the necessity of legal reform in Indonesia to ensure its conformity with the values, principles, and practices developing within society.

Specifically concerning public administration, any action undertaken by the Government, state administrators, or public officials cannot invalidate existing legal provisions unless there is a clear and explicit legal basis supported by rational justification. Under Indonesian positive law, this principle is reflected in Article 18 paragraph (1)(c) of the Government Administration Law, which stipulates that “Government Agencies and/or Officials are deemed to have exceeded their authority as referred to in Article 17 paragraph (2)(a) if the Decisions and/or Actions taken are contrary to the provisions of laws and regulations.” This provision is further clarified in Article 19 paragraph (1) of the Government Administration Law, which provides that “Decisions and/or Actions exercised beyond the authority as referred to in Article 18 paragraph (1) of the Government Administration Law are declared invalid” (Nalle, 2018).

This includes the recognition of CVs as subjects entitled to hold the Right to Build Title, as stipulated by the Minister of *ATR/BPN* through Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019. Legal scholars generally acknowledge that the Circular Letter contradicts Law No. 5 of 1960 on the Principles of Agrarian Law and Article 34 of Government Regulation No. 18 of 2021 on Management Rights and Land Rights, thereby rendering the policy legally defective from its inception. Furthermore, no sufficient legal rationale exists to justify such a policy, particularly due to the absence of a coherent explanation regarding its underlying rationale and urgency (Biya & Rudy, 2020). From 2019 to 2025, Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019 has remained in effect as the legal basis for CVs’ landholding under the Building Use Rights in Indonesia. Consequently, there is a significant possibility that legal disputes may arise if this matter is challenged before the court. The court may determine that Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019 is legally

defective. Furthermore, the land rights held by CVs under the Building Use Rights based on this Circular Letter are subject to legal uncertainty and may be considered invalid due to the defective legal foundation of the Circular Letter itself (Batubara et al., 2019).

Should this situation arise, the issue becomes increasingly significant, particularly because the Circular Letter has served as the legal basis for CVs' landholding under the Building Use Rights for an extended period (Biya & Rudy, 2020). Furthermore, one of the fundamental principles of contemporary jurisprudence, namely legal certainty, is challenged, particularly considering that Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019 has remained in effect for nearly seven years since its issuance in 2019. Therefore, it is necessary to formulate a solution to address this issue and prevent future land disputes arising from deficiencies in the drafting of Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019 (Batubara et al., 2019). In this regard, this research proposes a conceptual framework for land law reform, specifically through the revision of Article 36 of Law No. 5 of 1960 on the Principles of Agrarian Law and Article 34 of Government Regulation No. 18 of 2021. These revisions are intended to provide a legal basis for the future recognition of CVs as subjects entitled to hold the Building Use Rights, accompanied by the following considerations:

Initially, it is essential to establish a clear understanding of the rationale and objectives underlying the accommodation of CVs as subjects entitled to hold the Building Use Rights. A careful examination of Circular Letter of the Minister of *ATR/BPN* No. 2/SE-HT.02.01/VI/2019 reveals the absence of a clear and substantive basis supporting the recognition of CVs as subjects of the Building Use Rights, whether in terms of legal benefits or legal certainty. This issue is significant because the essence of a legal product, when examined from a philosophical perspective, concerns its utility and the objectives underlying its formulation (La Ode Ghondohi et al., 2025). Does the establishment of a legal product genuinely reflect an effort to protect vulnerable groups, or is it primarily intended to serve broader public interests? Accordingly, academic analysis of the amendment of Article 36 of Law No. 5 of 1960 on the Principles of Agrarian Law in conjunction with Article 34 of Government Regulation No. 18 of 2021 on Management Rights and Land Rights is necessary to identify the underlying issues requiring improvement within the Indonesian land law framework, particularly concerning the recognition of CVs as entities entitled to hold the Building Use Rights (Suparto & Santos, 2024).

Secondly, the technical regulations governing the establishment of CV business entities under Indonesian corporate law require further refinement. It is widely acknowledged that the legal framework governing the establishment of CVs within the Indonesian legal system continues to rely on outdated provisions, particularly those contained in the Commercial Code, Articles 19–21, alongside Regulation of the Minister of Law and Human Rights No. 17 of 2018 concerning the registration of CVs (Ardhira & Anand, 2018). In practice, the establishment of a CV business entity remains relatively simple. The implications of recognizing CVs as subjects entitled to hold the Building Use Rights therefore raise significant concerns. Although the establishment and dissolution procedures of CVs are comparatively straightforward, such conditions may create opportunities for criminal acts or unlawful conduct by irresponsible parties. Accordingly, specific regulatory mechanisms should be developed in the future to facilitate the recognition of CVs as subjects entitled to hold the Building Use Rights. For example, the Articles of Association and Bylaws (*AD/ART*) should be formulated in greater detail by outlining the objectives and strategic direction of the CV business entity, thereby ensuring a commitment to lawful business activities and preventing potential involvement in unlawful conduct.

C. Conclusion

The author's research demonstrates that the legitimacy of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (*ATR/BPN*)'s policy recognising Commanditaire Vennootschap (CV) as a subject entitled to hold Building Use Rights must be assessed within the

framework of administrative discretion and the legal status of policy regulations. As a form of policy regulation (*beleidsregel*), a circular letter does not derive its authority from the legislative power to create binding legal norms but rather from the discretionary authority granted to government institutions to implement public administration effectively. In this context, Circular Letter of the Minister of ATR/BPN No. 2/SE-HT.02.01/VI/2019 concerning the Granting of Building Use Rights to CV was issued as an administrative response intended to facilitate investment activities and provide broader access to land rights for business actors. However, the exercise of such discretion must remain within the legal boundaries established by the principle of legality, the hierarchy of laws and regulations, and the General Principles of Good Governance. Administrative discretion does not grant government authorities unlimited freedom to create new legal subjects or modify rights and obligations that have already been determined by legislation.

In administrative law, discretion (*freies Ermessen*) represents the authority of state administrators to take decisions or actions in circumstances where legislation provides flexibility, contains ambiguity, or does not fully regulate a particular matter. Nevertheless, discretion is inherently limited and must be exercised responsibly, rationally, proportionally, and in good faith. The exercise of discretion must not conflict with written laws and regulations, must be directed toward the public interest, must avoid conflicts of interest, and must comply with the principles of good governance. Therefore, the legality of a discretionary policy cannot be determined solely by considering its policy objectives, such as economic development or investment facilitation, but must also be evaluated based on whether the government possesses sufficient legal authority to issue such a policy. Applying these principles to Circular Letter No. 2/SE-HT.02.01/VI/2019, this research finds that the policy raises fundamental legal concerns because its substance is inconsistent with three principal legal frameworks: Law No. 30 of 2014 on Government Administration, Law No. 5 of 1960 on Basic Agrarian Principles, and Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration.

The inconsistency arises because the Circular Letter effectively expands the category of legal subjects entitled to hold Building Use Rights beyond those expressly recognised by higher-ranking legislation. Article 36 paragraph (1) of the Basic Agrarian Law and Article 34 of Government Regulation No. 18 of 2021 limit the holders of Building Use Rights to Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. Since a CV is not recognised as a legal entity with a separate legal personality from its partners, granting Building Use Rights to CVs through a circular letter constitutes a substantive alteration of the existing legal framework rather than merely an administrative interpretation. Consequently, the Circular Letter exceeds the legitimate function of administrative discretion because it does not merely implement existing legal norms but introduces a new category of rights holders without explicit statutory authority.

Accordingly, this research concludes that Circular Letter of the Minister of ATR/BPN No. 2/SE-HT.02.01/VI/2019 lacks sufficient legal validity as a basis for recognising CVs as subjects entitled to hold Building Use Rights. Nevertheless, the economic rationale underlying the policy, namely facilitating investment and supporting business development, reflects a legitimate policy objective that should not be disregarded. Therefore, the appropriate legal solution is not to preserve such recognition through administrative discretion but to undertake comprehensive reform of national land law. Such reform should be conducted through the amendment of Article 36 of the Basic Agrarian Law and Article 34 of Government Regulation No. 18 of 2021 to provide a clear legal foundation for the possible recognition of CVs as subjects of Building Use Rights. However, such recognition must be accompanied by clear legal considerations regarding its objectives, benefits, and limitations. Furthermore, strengthening the regulatory framework governing the establishment and operation of CV business entities is essential, particularly concerning legal responsibility, governance structure, accountability mechanisms, and prevention of misuse. Through these reforms, Indonesia may achieve a balanced legal framework that simultaneously

promotes investment, protects legal certainty, and maintains consistency within the national land law system.

REFERENCES

- Abdurrahman, A., Santoso, B., & Priyono, E. A. (2026). Extended Land-Tenure Rights in Nusantara: A Legal Analysis of Regulatory Inconsistency and Agrarian Justice. *Jurnal Hukum Progresif*, 14(2), 421–458. <https://doi.org/10.14710/jhp.14.2.421-458>
- Abhimantara, I. B. (2019). Kedudukan Persekutuan Komanditer (Commanditaire Venootschap) Sebagai Corporate Guarantee. *Notaire*, 2(3), 359. <https://doi.org/10.20473/ntr.v2i3.16227>
- Akmal, D. U. (2021). Penataan Peraturan Perundang-Undangan Sebagai Upaya Penguatan Sistem Hukum di Indonesia. *Jurnal Legislasi Indonesia*, 18(3), 296–308. <https://doi.org/10.54629/jli.v18i3.761>
- Alexander, J., & Richmond, S. A. (2007). Administrative Discretion. *The American Review of Public Administration*, 37(1), 51–64. <https://doi.org/10.1177/0275074006287919>
- Anggono, B. D. (2016). The Tenure Arrangement of Primary Constitutional Organ Leaders in Indonesian Constitutional System. *Constitutional Review*, 2(1), 29–56. <https://doi.org/10.31078/consrev212>
- Ardani, M. N., Yusriyadi, Y., & Silviana, A. (2024). Sustainable Environmental Management in Nusantara Capital City: Legal Perspectives and Best Practices. *Diponegoro Law Review*, 9(2), 167–185. <https://doi.org/10.14710/dilrev.9.2.2024.167-185>
- Ardhira, A. Y., & Anand, G. (2018). Itikad Baik dalam Proses Mediasi Perkara Perdata di Pengadilan. *Media Iuris*, 1(2), 200–214. <https://doi.org/10.20473/mi.v1i2.8821>
- Asshiddiqie, J. (2006). *Perihal Undang-Undang*. Konstitusi Press.
- Austin, J. (1832). *The Province of Jurisprudence Determined*. John Murray.
- Baber, W. F. (2011). Administrative Law and Discursive Democracy: Toward a Comparative Perspective. *International Journal of Public Administration*, 34(1–2), 97–103. <https://doi.org/10.1080/01900692.2011.536090>
- Basah, S. (1985). *Eksistensi dan Tolok Ukur Badan Peradilan Administrasi Negara*. Alumni.
- Basuki, A., Zaid, M., & Mohamed Musa, A. A. (2023). Establishing Ecological Justice in the Governance of Land Inventory, Ownership, and Utilisation in Indonesia. *Journal of Law, Environmental and Justice*, 1(2), 137–154. <https://doi.org/10.62264/jlej.v1i2.12>
- Batubara, S. C., Kotan, G. M. J., & Hartono, R. A. (2019). Persekutuan Komanditer (Commanditaire Venootschap) Sebagai Pemegang Hak Guna Bangunan. *Notaire*, 2(3), 405–420. <https://doi.org/10.20473/ntr.v2i3.16216>
- Bertelli, A. M., Falletti, V., & Cannas, S. (2025). Authorized Discretion: The Democratic Essentials of Governance in the European Union. *Governance*, 38(3), e70029. <https://doi.org/10.1111/gove.70029>
- Biya, C. I. B. P., & Rudy, D. G. (2020). Persekutuan Komanditer Sebagai Subjek Pemegang Hak Guna Bangunan Berdasarkan Surat Edaran Menteri ATR/BPN Nomor 2/SE-HT.02.01/VI/2019. *Acta Comitas*, 5(1), 14–25. <https://doi.org/10.24843/AC.2020.v05.i01.p02>

- Brik, A. B. (2026). Policy Design Under Institutional Constraint: Discretion, Targeting, and Governance Infrastructure. *Policy Design and Practice*, 9(3), 362–375. <https://doi.org/10.1080/25741292.2026.2675154>
- Carelli, D., & Peters, B. G. (2024). Autonomy by Decree: How Administrative Law Shapes Bureaucratic Autonomy in Four Administrative Traditions. *Administration & Society*, 56(5), 683–703. <https://doi.org/10.1177/00953997241244500>
- Cartier, G. (2009). Administrative Discretion and the Spirit of Legality: From Theory to Practice. *Canadian Journal of Law and Society*, 24(3), 313–335. <https://doi.org/10.1017/S0829320100010061>
- Castro Fuentes, C. (2023). El Control Judicial de la Discrecionalidad Administrativa. *Revista Chilena de Derecho y Ciencia Política*, 14(1), 1-19. <https://doi.org/10.7770/rchdcp-v14n1-art337>
- Disantara, F. P. (2020). The Legitimacy of Circular Letter in Handling COVID-19 Pandemic. *Rechtsidee*, 6(2). <https://doi.org/10.21070/jihr.2020.6.645>
- Dyzenhaus, D., Hunt, M., & Taggart, M. (2001). The Principle of Legality in Administrative Law: Internationalisation as Constitutionalisation. *Oxford University Commonwealth Law Journal*, 1(1), 5–34. <https://doi.org/10.1080/14729342.2001.11421382>
- Enqvist, L., & Naartijärvi, M. (2023). Discretion, Automation, and Proportionality. In *The Rule of Law and Automated Decision-Making* (pp. 147–178). Springer International Publishing. https://doi.org/10.1007/978-3-031-30142-1_7
- Fathoni, M. Y., & Vasalo, A. F. (2023). Establishment of Land Court in Indonesia: An Effort to Realise Justice Based on Pancasila. *Journal of Law, Environmental and Justice*, 1(2), 86–104. <https://doi.org/10.62264/jlej.v1i2.6>
- Firman, T. (2004). Major Issues in Indonesia's Urban Land Development. *Land Use Policy*, 21(4), 347–355. <https://doi.org/10.1016/j.landusepol.2003.04.002>
- Friedman, L. M. (2015). Law: Change and Evolution. In *International Encyclopedia of the Social & Behavioral Sciences* (pp. 565–569). Elsevier. <https://doi.org/10.1016/B978-0-08-097086-8.86060-2>
- Fuad, F., Tardjono, H., Machmud, A., Rohayah, N., & Maghucu, P. (2023). Ownership of Land: Legal Philosophy and Culture Analysis of Land Property Rights. *Jurnal Media Hukum*, 30(2), 98–116. <https://doi.org/10.18196/jmh.v30i2.18264>
- Fuller, L. L. (1969). *The Morality of Law*. Yale University Press.
- Gilbert, J. (2013). Land Rights as Human Rights: The Case for a Specific Right to Land. *SUR - International Journal on Human Rights*, 18, 115–135. <https://sur.conectas.org/en/land-rights-human-rights/>
- Gonschorek, G. J. (2021). Subnational Favoritism in Development Grant Allocations: Empirical Evidence from Decentralized Indonesia. *World Development*, 139, 105299. <https://doi.org/10.1016/j.worlddev.2020.105299>
- Gonschorek, G. J., Schulze, G. G., & Sjahrir, B. S. (2018). To the Ones in Need or the Ones You Need? The Political Economy of Central Discretionary Grants – Empirical Evidence from Indonesia. *European Journal of Political Economy*, 54, 240–260. <https://doi.org/10.1016/j.ejpoleco.2018.04.003>

- Hadna, A. H., Listyaningsih, U., & Ihwanudin, I. (2022). To What Extent Have Street-Level Bureaucrats Used Their Discretionary Powers During The COVID-19 Pandemic in Indonesia? *International Journal of Public Sector Management*, 35(7), 806–820. <https://doi.org/10.1108/IJPSM-12-2021-0272>
- Hamidi, J. (1999). *Penerapan Asas-Asas Umum Penyelenggaraan Pemerintahan yang Layak (AAUPB) di Lingkungan Peradilan Administrasi Indonesia*. Citra Aditya Bakti.
- Hanum, W. N., Ha, T. T. D., & Firmandayu, N. (2024). Eliminating Ecological Damage in Geothermal Energy Extraction: Fulfillment of Ecological Rights by Proposing Permits Standardization. *Journal of Law, Environmental and Justice*, 2(2), 205–228. <https://doi.org/10.62264/jlej.v2i2.105>
- Hanum, W. N., & Zaman, M. N. U. (2024). Existence of Human Rights Protection in Land and Mining Conflicts: Evidence from Indonesia. *Journal of Law, Environmental and Justice*, 2(3), 285–306. <https://doi.org/10.62264/jlej.v2i3.107>
- Harada, H. (2024). Constitutional State and Public Administration. In K. Agata, H. Inatsugu, & H. Shiroyama (Eds.), *Public Administration in Japan* (pp. 17–33). Springer International Publishing. https://doi.org/10.1007/978-3-031-58610-1_2
- Hartanto, P., Ricky, R., & Gunawan, V. A. (2025). Using Indonesian Corruption Law for Eradicating the Yogyakarta Sultanate Land Mafia: A Legal Formulation Study. *Indonesian Journal of Crime and Criminal Justice*, 1(1), 23–53. <https://doi.org/10.62264/ijccj.v1i1.122>
- HR, R. (2014). *Hukum Adminitrasi Negara*. PT. Raja Gravindo Persada.
- Hupe, P. (2025). Discretion in Public Policy. In M. van Gerven, C. Rothmayr Allison, & K. Schubert (Eds.), *Encyclopedia of Public Policy* (pp. 1–7). Springer Nature Switzerland. https://doi.org/10.1007/978-3-030-90434-0_112-1
- Juwita, R. (2018). Good Governance and Anti-Corruption: Responsibility to Protect Universal Health Care in Indonesia. *Hasanuddin Law Review*, 4(2), 162–180. <https://doi.org/10.20956/halrev.v4i2.1424>
- Kelsen, H. (1941). The Pure Theory of Law and Analytical Jurisprudence. *Harvard Law Review*, 55(1), 44–70. <https://doi.org/10.2307/1334739>
- Kelsen, H. (1949). *General Theory of Law and State*. Harvard University Press.
- Kravchuk, R. S. (1991). Public Administration and the Rule of Law. *International Journal of Public Administration*, 14(3), 265–301. <https://doi.org/10.1080/01900699108524718>
- Kusumastuti, D., Saputra, R., & Firmandayu, N. (2025). Good Faith in the United States' International Reciprocal Tariff Agreements: Safeguarding Indonesian Domestic Products. *Substantive Justice International Journal of Law*, 8(2), 163–183. <https://doi.org/10.56087/substantivejustice.v8i2.512>
- La Ode Ghondohi, H.M. Said KARim, Muhadar, M., Ali Rahman, & Maratovna, Y. A. (2025). Asset Recovery from Mining Corruption: Rationality, Urgency, and Challenges for Environmental Restoration. *Journal of Law, Environmental and Justice*, 3(2), 446–475. <https://doi.org/10.62264/jlej.v3i2.172>
- Lim, H.-H. (2007). Improving Administrative Performance in Malaysia: The More Difficult Next Steps in Reform. *Policy and Society*, 26(2), 33–59. [https://doi.org/10.1016/S1449-4035\(07\)70107-8](https://doi.org/10.1016/S1449-4035(07)70107-8)

- Luthan, S. (2012). Dialektika Hukum dan Moral dalam Perspektif Filsafat Hukum. *Jurnal Hukum Ius Quia Iustum*, 19(4), 506–523. <https://doi.org/10.20885/iustum.vol19.iss4.art2>
- Marbun, SF., & MD, Moh. M. (2009). *Pokok-Pokok Hukum Administrasi Negara*. Liberty.
- Matipa, B. (2020). Administration and Discretion. In A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy, and Governance* (pp. 1–4). Springer International Publishing. https://doi.org/10.1007/978-3-319-31816-5_3911-1
- McCann, S. (2023). Discretion in the Automated Administrative State. *Canadian Journal of Law & Jurisprudence*, 36(1), 171–194. <https://doi.org/10.1017/cjlj.2022.25>
- McHarg, A. (2017). Administrative Discretion, Administrative Rule-making, and Judicial Review. *Current Legal Problems*, 70(1), 267–303. <https://doi.org/10.1093/clp/cux011>
- Montjoy, R. S., & O'Toole, L. J. (1979). Toward a Theory of Policy Implementation: An Organizational Perspective. *Public Administration Review*, 39(5), 465–476. <https://doi.org/10.2307/3109921>
- Muhshi, A. (2018). Pemenuhan Hak atas Informasi Publik sebagai Tanggung Jawab Negara dalam Mewujudkan Good Governance. *Lentera Hukum*, 5(1), 59-76. <https://doi.org/10.19184/ejlh.v5i1.7284>
- Nalle, V. I. W. (2018). The Scope of Discretion in Government Administration Law: Constitutional or Unconstitutional? *Hasanuddin Law Review*, 4(1), 1-14. <https://doi.org/10.20956/halrev.v4i1.1316>
- Nurudin, A. (2016). Diskresi Yudisial: Antara Keadilan dan Pencitraan. *Masalah-Masalah Hukum*, 45(1), 18-24. <https://doi.org/10.14710/mmh.45.1.2016.18-24>
- Ong, B. J. (2021). The Unmeritorious ‘Legality’/‘Merits’ Distinction in Singapore Administrative Law. *Asian Journal of Comparative Law*, 16(1), 1–32. <https://doi.org/10.1017/asjcl.2021.10>
- Paar-Jakli, G., Schreckhise, W. D., & Chand, D. E. (2024). Administrative Discretion Through Changing Presidencies and Political Polarization: Reflection on the Rise, Fall, and Rise of Federal-Local Immigration Partnerships in the U.S. *International Journal of Public Administration*, 47(14), 1001–1018. <https://doi.org/10.1080/01900692.2023.2242006>
- Palmer, C. (2011). Property Rights and Liability for Deforestation Under REDD+: Implications For ‘Permanence’ in Policy Design. *Ecological Economics*, 70(4), 571–576. <https://doi.org/10.1016/j.ecolecon.2010.10.011>
- Purbopranoto, K. (1975). *Beberapa Catatan Hukum Tata Pemerintahan dan Peradilan Administrasi Negara*. Alumni.
- Rahmah, S., Jalil, H., & Kadir, M. Y. A. (2024). Legal Dilemma for Land Deed Officials in Transferring Land Title Within Agrarian Reform in Indonesia: A Study in Aceh Province. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 8(1), 556-578. <https://doi.org/10.22373/sjkh.v8i1.16898>
- Rahman, W., Sudarsono, S., Djatmika, P., Madjid, A., & Rehulina, R. (2024). Discretion of Government Officials Detrimental to State Finances: The Intersection Between Administrative Illegality and Criminal Illegality. *Law Reform*, 20(2), 230–249. <https://doi.org/10.14710/lr.v20i2.64129>

- Rini, N. S. (2018). Penyalahgunaan Kewenangan Administrasi Dalam Undang Undang Tindak Pidana Korupsi. *Jurnal Penelitian Hukum De Jure*, 18(2), 257–274. <https://doi.org/10.30641/dejure.2018.V18.257-274>
- Rosenbloom, D. H. (2022). *Administrative Law for Public Managers*. Taylor & Francis.
- Rosenbloom, D. H., O’Leary, R., & Chanin, J. (2017). *Public Administration and Law*. Routledge.
- Ruiz-Tagle, S. (2024). From Discretion to Expert Judgement: Recasting Sedimented Concepts in Administrative Law. *The Cambridge Law Journal*, 83(3), 549–580. <https://doi.org/10.1017/S0008197324000473>
- Saefudin, Y., Rakhmatullah, B. R., Mohd Hassan, F., Ma’ruf, M., & Kurnianingsih, I. D. K. D. S. (2025). Empowering the Tri Hita Karana Paradigm for the Community: As an Effort to Prevent and Combat Environmental Crime. *Journal of Law, Environmental and Justice*, 3(2), 383–416. <https://doi.org/10.62264/jlej.v3i2.166>
- Samekto, F. X. A., & Natalis, A. (2024). Exploring the Grundnorm Dilemma: Can Pancasila be Considered the Grundnorm in the Context of “the Pure Theory of Law”? *Journal of Philosophical Investigations*, 18(48), 319–338. <https://doi.org/10.22034/jpiut.2024.62978.3843>
- Saputra, R., Suwadi, P., Broto Laksito, F. H., & Santos, J. G. (2025). The Authority of Judges in Determining Suspects of Corruption: Rationality for the reform of Indonesia Criminal Justice in Corruption. *Indonesian Journal of Crime and Criminal Justice*, 1(2), 188–219. <https://doi.org/10.62264/ijccj.v1i2.145>
- Schmidt-Larios, D. (2026). Land Through Three Approaches. *Agriculture and Human Values*, 43(1), 35. <https://doi.org/10.1007/s10460-026-10853-1>
- Sinaga, E. M. C., & Putri, M. C. (2020). Formulasi Legislasi Perlindungan Data Pribadi dalam Revolusi Industri 4.0. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 9(2), 237–256. <https://doi.org/10.33331/rechtsvinding.v9i2.428>
- Soeprapto, M. F. I. (2007). *Ilmu Perundang-Undangan: Jenis, Fungsi, dan Materi Muatan*. PT Kanisius.
- Suhariyanto, B. (2018). Persinggungan Kewenangan Mengadili Penyalahgunaan Diskresi Antara Pengadilan TUN dan Pengadilan Tipikor / Interception of Justice Authority of Discretion Abuse Between Administration Court and Corruption Courts. *Jurnal Hukum Dan Peradilan*, 7(2), 213–236. <https://doi.org/10.25216/jhp.7.2.2018.213-236>
- Suparto, Adinda, F. A., Esanov, A. E., & Normurotovna, Z. E. (2024). Administrative Discretion in Indonesia & Netherland Administrative Court: Authorities and Regulations. *Journal of Human Rights, Culture and Legal System*, 4(1), 75–100. <https://doi.org/10.53955/jhcls.v4i1.189>
- Suparto, S., & Santos, J. G. (2024). Regional Spatial Regulation in Riau Province: Policy Formation Problems and Solutions. *Journal of Law, Environmental and Justice*, 2(2), 185–204. <https://doi.org/10.62264/jlej.v2i2.104>
- Surahno, S., Ruyadi, Y., & Nurdin, E. S. (2024). Internalisasi Nilai Pancasila dalam Praktik Diskresi Bagi Pengambilan Kebijakan. *Masalah-Masalah Hukum*, 53(3), 316–325. <https://doi.org/10.14710/mmh.53.3.2024.316-325>

- Syam, F., Rahmi, E., & Arsyad, A. (2019). Eksistensi dan Konstruksi Yuridis Badan Usaha Milik Daerah Pasca Undang-Undang Pemerintahan Daerah Tahun 2014. *Undang: Jurnal Hukum*, 1(2), 295–322. <https://doi.org/10.22437/ujh.1.2.295-322>
- Theresia, E. (2022). Perkembangan dan Status Kedudukan Hukum atas Persekutuan Komanditer atau Commanditaire Vennootschap (CV) di Indonesia. *Fiat Iustitia : Jurnal Hukum*, 114–124. <https://doi.org/10.54367/fiat.v3i1.2133>
- Trubek, D. M. (2001). Law and Development. In *International Encyclopedia of the Social & Behavioral Sciences* (pp. 8443–8446). Elsevier. <https://doi.org/10.1016/B0-08-043076-7/02910-7>
- Tsukanov, N. (2023). Administrative Discretion: Some Ideas Based on the Results of the Discussion. *Gosudarstvo i Pravo*, (12), 214–218. <https://doi.org/10.31857/S102694520029379-7>
- Vese, D. (2025). Discretion and the Public Interest: The Case of the European Banking Authority. *The Cambridge Law Journal*, 84(2), 368–396. <https://doi.org/10.1017/S0008197325100718>
- Warren, K. F. (2018). *Administrative Law in the Political System*. Routledge.
- White, B., Graham, C., & Savitri, L. (2023). Agrarian Movements and Rural Populism in Indonesia. *Journal of Agrarian Change*, 23(1), 68–84. <https://doi.org/10.1111/joac.12506>
- Wijaya, S. G., & Gunawan, M. M. (2025). Police Discretion on Terminating Corruption Investigations After Return State Financial Losses in Indonesia: Validity and Challenges. *Indonesian Journal of Crime and Criminal Justice*, 1(1), 1–22. <https://doi.org/10.62264/ijccj.v1i1.124>
- Zaelani, M. A., Rachmi Handayani, I. G. K. A., & Isharyanto, I. (2019). Asas Umum Pemerintahan Yang Baik Berlandaskan Pancasila Sebagai Dasar Penggunaan Diskresi. *Jurnal Hukum Ius Quia Iustum*, 26(3), 458–480. <https://doi.org/10.20885/iustum.vol26.iss3.art2>
- Zafimahatradraibe, J. A., Ranaivomanana, L. N. J., Rakotomahazo, C., Randriamanantsoa, B., Hartmann, A. C., & Todinanahary, G. G. B. (2025). Authority, Capacity, and Power to Govern: Three Marine Protected Areas Co-Managed by Resource Users and Non-Governmental Organizations. *Marine Policy*, 177, 106647. <https://doi.org/10.1016/j.marpol.2025.106647>
- Zamroni, M. (2019). General Principles of Good Governance in Indonesia: What are The Legal Bases? *Varia Justicia*, 15(1), 1–8. <https://doi.org/10.31603/variajusticia.v15i1.2464>
- Zhang, L. (2015). Operation of Chinese Venture Capital. In *Chinas Venture Capital Market* (pp. 45–52). Elsevier. <https://doi.org/10.1016/B978-0-85709-450-6.00003-6>